THE MUTUAL RELATIONS AND INFLUENCE OF LAW AND MEDICINE

A PRESIDENTIAL ADDRESS

BY

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Gentlemen,—My first duty is to thank you for the honour you have done me in electing me President of this learned Society. I must, however, confess to some feeling of misgiving when I reflect upon my own small experience of the matters which come within purview of our Society, compared with the larger experience of my two distinguished predecessors, Sir William Collins and Mr Justice Walton. I shall often need your indulgence, and trust that I may not appeal in vain.

To those who have not had the advantage of attending the meetings of the Society, and of listening to the papers which have been read, and to the discussions which have taken place, some reflexion is needed to appreciate the *raison d'être* of a society such as this. On reflexion, however, it is obvious that there is a large domain of thought and action common to both Law and Medicine. Medical jurisprudence has for many years been one of the subjects included in the medical curriculum; but no one will, I imagine, pretend that this subject is studied in medical schools with much seriousness by the ordinary student. Moreover, the conditions under which medical jurisprudence is taught in medical schools have too often led the members of my profession to regard it mainly as a matter of anatomy, physiology, medicine, surgery, and psychology; and they have not taken into sufficient account the equally important part of the principles of jurisprudence and the

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laws of evidence. I will not enter upon the vexed question as to which of the two disciplines, Law and Medicine, is the predominant element in medical jurisprudence. Both are indispensable, and it may be that the ultimate solution will be the rise of the medico-legal speciality and the evolution of a new class of professional men—medical jurists strictly so called,—trained both in Law and in Medicine.

Meanwhile, I should like to direct your attention to some of the co-relations of the two professions, some of their resemblances, and some of their differences.

The prominent fact is that they are *professions*. Both require long periods of special training; both call for special intellectual aptitudes; both have a system of ethics partly peculiar to each and partly common to both; and though there are differences in procedure they have this great characteristic in common, that in practice the members of each devote all their powers, their skill, their learning and acumen to the welfare of their patients or clients, without fear or favour, and very often without any personal consideration or hope of material reward. This altruistic spirit has been inculcated in my profession by most of its great writers from the time of Hippocrates downwards. Hippocrates constantly exhorts medical men in the exercise of their profession never to allow themselves to be influenced by other motives than that of benefiting those who come under their care, and of gaining greater opportunities of improving their own knowledge; never to conduct themselves in a sordid spirit, and to lose no opportunity of helping others. Plato more than once refers to these characteristics of medical men. No physician, he says, considers his own good in what he prescribes, but the good of his patients: he is not a mere money-maker; and the healing art, even if practised for reward, is not mercenary. So no doubt it is with lawyers. Cicero, who was, I take it, as great in Law as Hippocrates was in Medicine, remarks in *Pro Murena*: "The barrister's work is hard, his aim is high, his practice dignified, and his chance of popularity very great." With the exception, perhaps, of the last clause, this description is equally applicable to the work of the medical man.

It is interesting to note how frequently in the course of ages the members of the Medical and of the Legal professions are found in juxtaposition; sometimes, it is true, at variance, but more often as joint-labourers in the advance of knowledge, in the defence of civil and religious liberty, in the struggle for freedom of thought. It is specially interesting to notice how the status and the vicissitudes of the two professions have been affected and influenced by the social, economic, religious, and political conditions in different countries and in different ages.

In ancient Greece and in ancient Rome there was a notable dissimilarity between the relative status of the two professions. In ancient Athens, at a time when medicine was already well organised, professional lawyers had scarcely come into existence. Hired advocates were expressly forbidden in courts of law, every citizen being presumed by law capable of pleading his own cause. An inexperienced speaker could obtain permission from the judges to call "a friend" or relation to support him, but these friends never developed into professional advocates. They had to satisfy the audience that their only motive was personal feeling, even if this personal feeling were nothing better than hatred of the side opposed. This system produced an art practised by men who made a business of composing speeches to be learned and delivered by others. The perfection of the logographer's art was to mask his identity and to disguise his legal learning. On the other hand, in Greece and Asia Minor, at this time, the physician was held in high esteem. State physicians were employed in Greece, from Democedes downwards. They received salaries in their public capacity, and they received public honours for distinguished services. At this time Hippocrates was collecting, criticising, and consolidating that body of medical doctrine and practice based on Observation and Reasoning, τριβὴ μετὰ λόγου, which has prevailed in Europe for twenty centuries, and may still be regarded as the true source of Modern Medicine.

In ancient Rome, on the other hand, the relative status of the two professions was reversed. In Rome there were but two professions—Arms and Law. By the one, it has been said, the

Romans conquered the world; by the other they governed it. But Medicine can hardly be said to have existed at all as a profession at this time, and the treatment of disease was chiefly by traditional family recipes, founded partly on experience and partly on superstition.

As late as the year 150 B.C., Pliny states that the Romans were *sine medicis nec tamen sine medicina*. Except the slaves skilled in medicine who were kept in the large households most of the physicians who practised in ancient Rome were Greeks, many of whom were mere adventurers who flocked to the city in search of wealth or fame. There were no legal ordinances regulating the character of medical training, and students acquired their knowledge how and where they liked. Cato, though himself a credulous dabbler in domestic medicine, had a profound contempt and distrust of the Greek physicians, and declared that they had banded themselves together to poison all who were not Greeks.

It is not easy to understand the reasons for the remarkable difference between the position and status of lawyers and medical men in ancient Greece and in ancient Rome, but it was apparently determined by the racial, social, and political differences of these two great people. The Greeks, though living in many self-centred and self-controlled city-states, owned a close relationship with each other and claimed a common origin. The Greek citizen was an individualist, and possessed "the love of freedom without the spirit of union." The Romans, on the other hand, were a mixed people made up of many races—the Italian races in Central Italy, the Gauls in the North, and the Greeks in the South. Withal there was a strong Etruscan element, to which it has been suggested the Romans owed their religion and their aristocratic constitution In Greece there was a unity broken up into an infinity of divisions; in Rome there was a diversity gathered together into a powerful unity, many diverse nations making a single people. The Greek sought to develop his personality; his individualism had free play, and in all his civic and political relations he maintained the principle of equality. In Rome egoistic individualism was suppressed and its activity transformed into a collectivism which

concentrated all its energies and activity, which were chiefly political, on the affairs of the State. The genius of the Greek spirit found its expression in art, literature, speculative philosophy, science, and rational medicine; the genius of conquering Rome manifested itself in administration and law.

Upon the break-up of the western Roman Empire, the character and methods of study, and the subjects of study, were again largely determined by social, ecclesiastical, and political conditions. In Western Europe the cloister became the home of the faithful, the retreat of the learned, and a refuge for those who desired safety. What learning survived was in the hands of the monks, and the only subject that was thought worthy of serious study was theology, as a preparation for the calling of the priest or the monk. In the University of Paris, in the twelfth and thirteenth centuries, there was no systematic teaching either of Medicine or of Civil Law. Indeed, Civil Law was hardly regarded as proper for ecclesiastical persons, and for a long time it was prohibited to them as likely to interfere with the study of theology and with ecclesiastical authority.

A similar state of things obtained with respect to Medicine. Although the great Italian surgeon Lanfranc had delivered a course of lectures in Paris about the year 1293, the School of Medicine of Paris in the year 1350 forbade its bachelors to practise manual surgery as being derogatory to an ecclesiastic. Nevertheless, partly owing to easy dispensations, and partly to defiance of authority, Law and Medicine were the only two secular studies in the Middle Ages; and both stood in somewhat similar relations with respect to society and the ecclesiastical authorities. The practice of Medicine was for many years almost entirely monopolised by the regular clergy. The study and practice of Civil Law seems to have been equally attractive, and equally lucrative. Many monks after taking the vow and assuming the habit, left their monasteries to follow the secular callings of Law and of Medicine. So common had the practice become that in the twelfth and thirteenth centuries various Councils of the Church or Papal Bulls forbade monks to study either Civil Law or Medicine. It was

further decreed that anyone leaving a monastery for this purpose without special permission and not returning within two months should be excommunicated. I do not know in what way this interdiction affected the profession of Law, but its effect upon the practice of Medicine was to create a separation between surgery and medicine. Many ecclesiastics continued to practise as physicians, but, being forbidden to engage in surgical operations, either *propter indecentiam* or in accordance with the maxim *ecclesia a sanguine abhorret*, abandoned surgery to laymen, the ecclesiastic physician despising it as a mere handicraft.

In the South of Europe, however, matters were somewhat different. The study of Medicine and Law was more actively cultivated, and was less trammelled by ecclesiastic authority. Medicine had been studied with considerable success in the school of Salerno as far back as the ninth century. Towards the end of the eleventh century there began the revival of the study of Medicine and of Civil and Canon Law in the universities of Northern Italy, especially at Bologna. The impulse to the renewed study of Medicine came partly from contact with the East, partly from the labours of Constantinus Africanus in the eleventh century, and partly from the introduction, through Latin translations, of Arabian writings from Spain by Gerard of Cremona in the twelfth century. It was to the Arabo-Greek influence that Bologna owed its important schools of Medicine and Mathematics, and Hastings Rashdall, in his fascinating *History of the Mediæval Universities*, suggests that it was probably in Italy and through Arabic that Adelard of Bath translated Euclid into Latin during the first half of the thirteenth century. In Italy secular education had never been completely extinguished as it had been in the North. The educational and political traditions of the old Roman world were never entirely broken. Though there were church schools they enjoyed no monopoly, and the race of lay teachers seems never to have died out in Northern Italy, even in the darkest period of the Middle Ages. When the revival of learning came, its most striking effects were seen, as Rashdall observes, not in the church schools

but in the schools of independent lay teachers. With this difference of conditions there was a difference between the classes from which the students of Paris and those of Northern Italy were drawn. It was customary for the Lombard nobility to give their sons a literary education at a time when the knights and barons of France and Germany were inclined to look upon reading and writing as unmanly accomplishments, fit only for priests or monks, and especially, as Rashdall observes, for monks not too well born. It showed itself, too, in the differences of the subjects of study. In Paris, learning manifested itself chiefly in dialectics, especially in dialectics in its metaphysical and theological applications. In Italy, on the contrary, grammar and rhetoric were the two chief studies, and these arts were studied as aids to composition in legal documents and as a preparation for the work of the notary and pleader rather than as preliminaries to the studies of the Scriptures and the Fathers, as in Paris. In France all intellectual life was confined to the cloister, or to the schools which were dependants of the cloister; while in Italy intellectual activity manifested itself mostly in the political sphere; the continuity of the old city life had been preserved, and the forms and the names of the Roman legal system maintained in more or less unbroken continuity. The University of Bologna in particular became the place of study for Civil and Canon Law, and, as Jebb has observed, gave the foremost place to the idea of professional training with a definite aim.

Lawyers and medical men are, I believe, entitled to claim equal credit as pioneers in the great intellectual movements of the twelfth and thirteenth century Renaissance. In the Renaissance of the sixteenth century lawyers and physicians were again associated. The New Learning was largely helped in England by an eminent lawyer, Sir Robert Rede, and by an eminent physician, Thomas Linacre. In the year 1518 Sir Robert Rede, Chief Justice of the Common Pleas, founded in the University of Cambridge three lectureships on history, logic, and philosophy, which in the year 1858 were consolidated into one lecture which still bears Rede's honoured name. About the same time Thomas Linacre, the most

eminent English physician of the day, went to Italy for the purpose of learning Greek. At Bologna he became the pupil of Angelo Poliziano, and afterwards at Florence shared the instruction which Poliziano gave to the sons of Lorenzo de Medici, the younger of whom afterwards become Pope Leo X. When Linacre had learned what he had wanted, he returned to Oxford and taught Medicine and Greek. Among Linacre's pupils were Sir Thomas More, Erasmus, and Queen Mary. Linacre was not only one of the first Englishmen who studied Greek in Italy, but he also revived classical medicine in England, wrote grammatical and medical works, and translated from the Greek, especially from Galen. To him also is chiefly owing the foundation of the Royal College of Physicians of London by Royal Charter in the year 1518.

One might cite many other instances from the pages of the history of civilisation of the parts which lawyers and medical men have played in the spread of learning. The formation of this Society may be regarded as the crown of this common endeavour. In the growing complexity of civilised society fresh problems are continually forcing themselves upon the attention of thoughtful men. Considerations of public health and of public well-being have fostered the growth of legislation relating thereto. Much of this legislation, though well-meaning, is imperfect and very often unscientific and futile, largely, I believe, because neither law nor legislation has kept pace with the advancement of medical knowledge and medical practice. Many of these defects may, perhaps, be only apparent and not essential, but due to the different kind of evidence required in courts of law and that which is available in medical investigation of injuries or disease at the bedside. A new Organon is required in the adjudication of medico-legal cases. Perhaps most of the conflicts which arise between legal evidence and medical opinion are due to the absence of such an organon. The legal maxim *De jure judices de facto juratores respondent* is, I believe, sacrosanct in the legal mind. To the judge rightly is given the interpretation of the law, but to leave to an untrained and unscientific jury a decision as to the "facts" in a disputed

medical case is not seldom a travesty of justice. Indeed in the practice of medicine there are often no " facts "such as jurymen can appreciate. In many cases the most experienced diagnostician can only form opinions. A person may complain, say, of pain, or of giddiness, or of inability to concentrate his thoughts. This complaint may or may not be genuine, but it is not a fact in the ordinary juryman's sense of the term. It may have no discoverable physical basis; and even if such a basis be found, the relationship between the physical state and the symptom may be only coincidental and at most conjectural. The most painstaking investigation may fail to discover *post-mortem* a physical explanation for bodily and especially mental symptoms during life.

If there were medical facts, in the juror's sense of the term, there could scarcely be any difference of opinion. Disputations do not arise about demonstrable truths. No conflict of opinion is likely to arise about a proposition of Euclid, for instance, or respecting the theory of gravitation or the theory of the circulation of the blood. It is only with respect to opinions, whether in religion, morals, politics, or medicine, that there can be any rational differences. No one suffers martyrdom, says Renan, for things about which he is sure. One only becomes impassioned about what is obscure.

Much controversy and misunderstanding would, I believe, be avoided if lawyers had truer insight into the nature of medical evidence, and if medical men were better acquainted with principles of law, and especially of legal evidence. Has not the time come for a radical reconsideration of the whole question of medical evidence in courts of law ? Perhaps the employment of specially trained medical assessors in cases where medical or surgical facts or opinions are in dispute would do much to prevent the unpleasant exhibitions which are too often witnessed in law courts when cases of this kind are under investigation. So keenly is this felt in my profession that many of the more eminent practitioners refuse, as far as possible, to have anything to do with cases which are likely to be submitted to a legal tribunal. And until there is

some readjustment and reconciliation between the requirements of legal evidence and the character of medical evidence this disinclination will increase, to the obvious detriment of the cause of Justice. This Society may perhaps do much to facilitate such a readjustment. If it is successful, it will, I submit, by this alone have amply justified its existence.